

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

CHARLOTTE HORTON, as guardian of Anna R.
Richardson,

Plaintiff,

vs.

COUNTRY MORTGAGE SERVICES, INC.; FREEMONT
INVESTMENT AND LOAN CO., and MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.,

Defendants.

FREEMONT INVESTMENT AND LOAN CO.,

Cross-Plaintiff,

vs.

COUNTRY MORTGAGE SERVICES, INC.

Cross-Defendant.

2007 CV 6530

Judge Lindberg

Magistrate Nolan

**COUNTRY MORTGAGE SERVICES, INC.'S
MOTION TO STRIKE PLAINTIFF'S RESPONSE TO MOTION TO DISMISS**

Defendant, COUNTRY MORTGAGE SERVICES, INC. ("CMS"), by and through its attorneys, DAVID W. INLANDER and RONALD D. MENNA, JR., of Fischel & Kahn, Ltd., as and for its Motion to Strike Plaintiff's Response to CMS' Motion to Dismiss, states as follows:

1. On January 4, 2008, CMS filed its Motion to Dismiss.
2. On January 30, 2008, this Court entered an Order which, *inter alia*, provided that Plaintiff was to file her Response to the Motion to Dismiss on or before February 13, 2008.
3. Plaintiff failed to file her Response to the Motion to Dismiss or to make a request to extend time on or before February 13, 2008.

4. In Court on February 21, 2008, Plaintiff's attorney incorrectly claimed that he was to file the Response to the Motion to Dismiss by February 20, 2008.

5. This Court then verbally ordered Plaintiff to file the instant motion, stated that CMS would be given time to respond and indicated that a briefing schedule would be part of an order issued that day.

6. No such order has been yet entered on the docket by the Clerk.

7. On February 22, 2008, *without leave of Court*, Plaintiff filed her Response to CMS' Motion to Dismiss.

8. As set forth herein, this Honorable Court should strike Plaintiff's Response.

9. Local Rule 78.3 provides:

LR78.3. Motions: Briefing Schedules; Oral Arguments; Failure to File Brief

The court may set a briefing schedule. Oral argument may be allowed in the court's discretion.

Failure to file a supporting or answering memorandum shall not be deemed to be a waiver of the motion or a withdrawal of opposition thereto, but the court on its own motion *or that of a party may strike the motion or grant the same without further hearing*. Failure to file a reply memorandum within the requisite time shall be deemed a waiver of the right to file.

(Emphasis added.)

10. Thus, Local Rule 78.3 explicitly provides that a failure to timely file a response, as occurred here, is automatically deemed "a waiver of the right to file."

11. Federal Rule of Civil Procedure 6 provides in the relevant part:

Rule 6. Time

* * *

(b) EXTENDING TIME.

(1) *In General.* When an act may or must be done within a specified time, the court may, for good cause, extend the time:

* * *

(B) on motion made after the time has expired if the party failed to act because of excusable neglect.

* * *

12. Here, while Plaintiff moved for an extension of time to file his Response, this Court has not granted her leave to do so.

13. Accordingly, this Court should strike Plaintiff's Corrected Motion for Extension of Time as being filed untimely and without leave of Court.

WHEREFORE, Country Mortgage Services, Inc. respectfully requests that this Honorable Court enter an Order granting it the following relief:

- A. Striking Plaintiff's Response to CMS' Motion to Dismiss; or
- B. Alternatively, granting CMS' seven (7) days to file its Reply in Support of its Motion to Dismiss; and
- C. Granting it such further relief as this Honorable Court deems equitable, just and proper.

Dated: February 25, 2008

Respectfully submitted,
COUNTRY MORTGAGE SERVICES, INC.

By: /s/ Ronald D. Menna, Jr.
One of Its Attorneys

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